Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 203 of	)	
The Telecommunications Act of 1996	)	MM Docket No. 96-90
(Broadcast License Terms)	)	
	)	
47 CFR Sections 73.1020 and 74.15	)	

COMMENTS OF
MEDIA ACCESS PROJECT AND CENTER FOR MEDIA EDUCATION

The Media Access Project ("MAP") and Center for Media Education ("CME") respectfully submit these comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC No. 96-169 (released April 12, 1996) ("*NOPR*"), to implement Section 203 of the Telecommunications Act of 1996 ("Act"), concerning terms of broadcast licenses. Observing that Section 203 permits, but does not require, it to lengthen the maximum broadcast license term to 8 years for both television and radio licenses, the Commission proposes to adopt the 8 year maximum license terms, and seeks comment on this proposal. *NOPR* at ¶5-7.

The Commission can, and should, require broadcasters to expand and improve their service to the public if it should choose to exercise its discretion to extend license terms. Because longer license terms will greatly reduce the Commission's ability to review licensee performance, greater public service requirements are necessary to ensure that the public interest is served. Therefore, the Commission should adopt quantitative requirements for locally-originated programming addressing community issues, news, and children's educational programming.

INTRODUCTION

Two points bear particular emphasis in this matter. First, extension of license terms is

a discretionary matter, not a ministerial act.

Second, since 1984, the Commission has placed primary reliance on viewers and listeners acting as "private attorneys general" to alert the Commission to licensees that fail to serve the public interest. A significant extension of license terms greatly diminishes the public's ability to scrutinize licensee performance and therefore increases the need for standards to guide broadcasters in the interim.

I. THE COMMISSION SHOULD EXTEND LICENSE TERMS TO EIGHT YEARS ONLY IF IT ALSO ADOPTS QUANTITATIVE PUBLIC INTEREST REQUIREMENTS.

The Commission has rightly noted that the language of Section 203 of the Act is merely permissive; it does not mandate extension of license terms to 8 years. *NOPR* at ¶5. Indeed, the plain language of Section 203 provides that license terms are "***not to exceed*** 8 years," and that the Commission may grant 8 year licenses only "if the public interest, convenience, and necessity would be served thereby." *Id.*; Act, §203. While the Commission may prescribe different terms for different station classes, it "may not adopt or follow any rule which would preclude it...from granting or renewing a license for a shorter period...if, in its judgment, the public interest, convenience, or necessity would be served by such an action." *Id.*; Act, §203.

With this language, Congress clearly intended to give the Commission discretion to extend the terms of broadcast licenses, under its mandate to ensure that the public interest is served. Congress could have, but did not, set the terms at exactly 8 years, preventing the Commission from exercising any discretion. Its inclusion, in the same sentence, of the requirement that the increased terms must serve the public interest can only mean that Congress meant to make ***benefit to the public*** a condition for 8 year license terms.

The public interest will be ***harmed*** by an increase in license terms unless there are corresponding requirements to ensure that broadcasters meet their public trustee obligations.[1] Indeed, increasing the time between license renewals will directly reduce public scrutiny of broadcasters' future performance; their use of the license will be examined every 8 years instead of every 5 or 7 years.

Moreover, the effect of longer terms must be taken together with the Act's new two-step renewal process. Act at §204(a).[2] The result will be ***virtually no public review*** of broadcasters' performance with their license to use the scarce, valuable public spectrum resource.

The sad irony here is that time and again the Commission has called upon members of the public to act as private attorneys general in lieu of day-to-day monitoring of broadcaster compliance with the Communications Act. *E.g., Television Deregulation Report and Order*, 98 FCC 2d 1076, 1091, 1109-1110 (1984) (elimination of programming evaluations in uncontested license renewals justified because "citizen complaints and formal petitions to deny provide an important monitoring function"); *Radio Deregulation Report and Order*, 84 FCC 2d 968, 1010-1011 (1981) (deregulated radio stations' service to the public ensured because "If a station is not addressing issues, citizens will be able to file complaints or petitions to deny."), *aff'd in part, rev'd in part, sub nom., UCC v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). Indeed, it is well-settled

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[1]It should be emphasized that many broadcasters do comply with their public trustee obligations under the Communications Act and provide programming which serves their communities, provides information, and enriches children. Yet the purpose of Commission oversight and public scrutiny is to ensure that ***all*** broadcasters meet their obligations, not just the best ones.

[2]To be codified at 47 USC §309(k). The Commission's order implementing this section of the Act was released on April 12, 1996. *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, FCC No. 96-172.

that the public is the principal beneficiary of the regulatory process and thus has a right to participate in Commission proceedings to ensure that broadcast stations serve the public interest. *UCC v. FCC*, 359 F.2d 994 (D.C. Cir. 1966). Yet the combined effect of 8 year licenses and two-step renewals makes the notion of private enforcement next to worthless.

Accordingly, broadcasters should not be afforded longer terms unless they provide more to the public, and the Commission makes such standards enforceable. The Commission should exercise its discretion if - and only if - it adds quantitative requirements for locally-originated programming addressing community issues, news, and children's educational programming. The great reduction in public review makes quantitative requirements all the more important.

It is well within the Commission's authority to create such requirements. For example, the Commission has in the past published internal guidelines which limited the Broadcast Bureau's authority to act on certain broadcast applications. *Notations re General Agenda*, June 28, 1961; *Delegation of Authority*, 43 FCC 2d 638 (1973); *Delegations of Authority*, 59 FCC 2d 491 (1976). The Commission had repeatedly cautioned that these were to be flexible, procedural guidelines, and that failure to meet them was not a bar to renewal, but merely triggered more detailed review by the Commission *en banc*. *See Television Deregulation Notice of Proposed Rulemaking*, 94 FCC 2d 678, 696 (1983).

II. THE COMMISSION'S PROPOSAL TO EXTEND LICENSE TERMS TO EIGHT YEARS DOES NOT SERVE THE PUBLIC INTEREST.

The Commission's proposal to license broadcasters for the maximum 8 year term, *NOPR* at ¶6, falls far short of the Section 203 standard of serving the public interest, convenience, and necessity. In seeking to show that its proposal meets the condition set forth in Section 203, the Commission offers three rationales - reduction of burden to broadcasters, consistency with past

Commission practice, and consistency with the legislative history of the Act. *NOPR* at ¶6.

As a matter of law, the Commission cannot substitute any of these bases for the only standard under which the decision is made: what is in the ***public's*** interest. The Commission improperly places its entire focus on what best serves the convenience of the broadcasters, not viewers and listeners.[3]

The Commission suggests that there is value in following past Commission practice of providing licenses terms of the maximum length. But that is not a reason, it is an excuse for failing to undertake independent inquiry based on the conditions as they exist today. The Commission here is reviewing a new statutory mandate. Therefore it is not bound by - although it may seek guidance from - interpretations of provisions which have now been superseded. In particular, it does not take into account the impact of extending license terms in light of other deregulatory measures adopted since license terms were last expanded in 1981. There is, in short, greater dependence on the license renewal process than was the case in the past; unless and until the Commission considers the impact of those changes, its past action offer little rationale for proposed policies. The new statutory scheme requires a ***contemporary*** finding that the public interest would be served.

Insofar as the Commission suggests that legislative history shows that Congress intended

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[3]It is well-settled that the interests of broadcasters are not identical with those of the public. "***The people as a whole*** retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the ***viewers and listeners***, not the right of the ***broadcasters***, which is paramount." *Red Lion Broadcasting v. FCC*, 395 US 367, 390 (1969) (emphasis added).

that the Commission provide for 8 year licenses,[4] the argument is utterly beside the point and conflicts with the plain language of the statute. Simply stated, the statute contemplates licenses "not to exceed 8 years." Any construction that the Commission ***must*** therefore provide 8 year terms is plainly in conflict with what Congress said. If Congress wished to insure that there be 8 year terms, it could have, and would have said so. "If the intent of Congress is clear, that is the end of the matter; for...the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron v. NRDC*, 467 U.S. 837, 842-43 (1983). As demonstrated above, the language of Section 203 makes abundantly clear, not once but twice, that the Commission may exercise its discretion to grant 8 year licenses only with added public service requirements on broadcasters. To read the legislative history as removing that discretion would turn the most basic tenet of statutory construction on its ear.

For what it is worth, the report language quoted by the Commission does not stand for the stated proposition. It does not paraphrase, quote or discuss the statute, and is merely part of a summary referring to the selection of the House's 8 year maximum, rather than the longer terms which the Senate would have authorized. Nothing in the bare one sentence discussion remotely suggests the outcome the Commission proposes; it is actually far more ambiguous than the statutory language it purports to interpret. Insofar as both the House and Senate reports, as well as the conference report, speak only to amending the number of years for licenses under existing statute, they endorsed the Commission's previous use of discretion for license terms.

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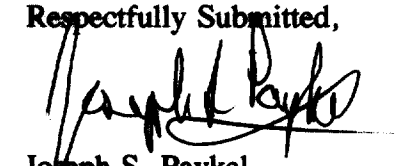
[4]The Commission cites the language of the Conference Report which states that the conference agreement "extend[ed] the license term for broadcast licensees to eight years for both television and radio." S. Conf. Rep. 104-230, 104th Cong., 2d Sess. 164 (1996). Yet this language does not specifically preclude the Commission from creating requirements to ensure that licensees meet their public trustee obligations.

Moreover, this rationale is flatly inconsistent with the Commission's concession that it has the discretion to do otherwise, and its proposal to license some classes of stations, such as experimental stations, for terms of less than 8 years. *NOPR* at ¶¶8-11. Indeed, the Commission interpreted identical statutory language (differing only in the number of years contained therein) which previously set forth the maximum license term, under the superseded 47 USC §307(c),[5] as affording it discretion to create shorter license terms for any kind of license.

CONCLUSION

Therefore, the Commission should extend license terms to 8 years only if it promulgates quantitative requirements for locally-originated programming addressing community issues, news, and children's educational programming.

Respectfully Submitted,



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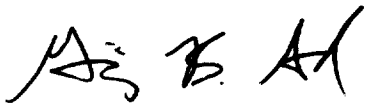

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[5]Enacted under the Omnibus Budget Reconciliation Act of 1981. Pub. L. 97-35.